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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/811,652	03/29/2004	Daniel J. Hill	JFMZ 2 00170	2455
7590	01/31/2005			
Jay F. Moldovanyi, Esq. Fay, Sharpe, Fagan, Minnich & McKee, LLP Sevneth Floor 1100 Superior Avenue Cleveland, OH 44114-2518			EXAMINER ARK, DARREN W	
			ART UNIT 3643	PAPER NUMBER
DATE MAILED: 01/31/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/811,652

Applicant(s)

HILL, DANIEL J.

Examiner

Darren W. Ark

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 March 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 3/29/2004.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: ____.

DETAILED ACTION

Drawings

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: nos. 46 and 48, legs of the striker are not shown in any of the Figures. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.
2. The drawings are objected to because in Fig. 2, the leftmost occurrence of no. 40 is incorrect since that striker actually represents set lever pin no. 100. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and

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where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency.

Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "86" has been used to designate both pair of openings in the top plate 16 and first cylinder on trigger plate 80. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

4. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the opening in the plate is larger than the entry opening (claim 18; the opening appears to be the same

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size in Fig. 3) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 12, 18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claim 12, the phrase "the step of retaining the striker includes passing a portion of the striker to a side of the trigger" renders the claim vague and indefinite since it is unclear how the striker exactly passes the trigger with regard to the phrase "to a side of the trigger".

In regard to claim 18, the phrase "the opening in the plate is larger than the entry opening" renders the claim vague and indefinite since Fig. 3 shows that opening 92 is about the same size as opening 26.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-17, 19 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Lehn 2,534,358.

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Lehn discloses a frame/housing (1) with an entry opening (one of 9); a striker (15) mounted to one of the upper wall and sidewalls (see Fig. 4); a biasing member (18, 18a); a set lever (16) with a first end pivotally mounted to the upper wall (at 25) and a second end selectively contacting the trigger (at 35); a trigger (17) comprising a plate pivotally (at 22) mounted to the upper wall (7, 14) and having an opening comprising a notch (between 40, 41; also see Figs. 8 & 9) removed from a bottom portion of the trigger plate (opening extends up from bottom of 17); a plate (6); a second opening (other of 9 diametrically opposite one of 9).

In regard to claim 13, Lehn discloses the step of positioning a pin (25) adjacent the entry opening (9).

9. Claims 1, 2, 7, 9, 11, 12, 14-17, 19 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by European Pat. No. 954,964 to Engstrom.

Engstrom discloses a frame (1); a striker (2) mounted to at least one the upper wall and sidewalls (at 6); a biasing member (3 which biases 2 toward horizontal position); a set lever (7); a trigger (8) comprising a plate with an opening (11 or also opening receiving axle 10); a plate (bottom of 1); a second opening (see Fig. 2 where there are about 4 openings shown).

10. Claims 1-17, 19 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Kania 4,425,732.

Kania discloses a frame (10); a striker (29) mounted to at least one the upper wall and sidewalls (by interconnection of parts); a biasing member (28 which biases 29 toward bottom); a set lever (7) with a first end pivotally mounted to the upper wall (via

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41) and a second end selectively contacting the trigger (at 48, 49); a trigger (47, 50) comprising a plate pivotally (via 42) mounted to the upper wall (14) and having an opening comprising a notch (between 50) removed from a bottom portion of the trigger plate (50 is mounted via an opening adjacent to 52 wherein the fastener thereat goes through a hole representing a removed portion of the plate); a plate (11); a second opening (18).

In regard to claim 13, Kania discloses positioning a pin (33) adjacent the entry opening.

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lehn 2,534,358 in view of Canadian Pat. No. 694,163 to Killinger.

Alternatively, Lehn does not disclose positioning a pin adjacent the entry opening. Killinger discloses placing a pin (16) adjacent an entry opening (11, 12 in Fig. 1). It would have been obvious to a person of ordinary skill in the art at the time of the invention to modify the method of Lehn such that a pin is positioned adjacent the entry opening in view of Killinger in order to anchor the device to the ground and maintain the trap position as desired.

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13. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lehn 2,534,358.

Lehn does not disclose the opening in the plate being larger than the entry opening. It would have been an obvious matter of design choice to make the opening in the plate such that it is larger than the entry opening since applicant has not disclosed that by doing so is critical to the design or produces any unexpected results and it appears that the device of Lehn would perform equally as well by doing so, and because by making the opening in the plate larger than the entry opening would allow the trigger plate to not be readily visible to the rodent and not present a possible obstacle through the housing to the second opening and also allow a larger portion of the rodent to enter the trap before triggering the striker.

14. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over European Pat. No. 954,964 to Engstrom in view of Canadian Pat. No. 694,163 to Killinger.

Engstrom does not disclose positioning a pin adjacent the entry opening. Killinger discloses placing a pin (16) adjacent an entry opening (11, 12 in Fig. 1). It would have been obvious to a person of ordinary skill in the art at the time of the invention to modify the method of Engstrom such that a pin is positioned adjacent the entry opening in view of Killinger in order to anchor the device to the ground and maintain the trap position as desired.

15. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kania 4,425,732 in view of Canadian Pat. No. 694,163 to Killinger.

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Alternatively, Kania does not disclose positioning a pin adjacent the entry opening. Killinger discloses placing a pin (16) adjacent an entry opening (11, 12 in Fig. 1). It would have been obvious to a person of ordinary skill in the art at the time of the invention to modify the method of Kania such that a pin is positioned adjacent the entry opening in view of Killinger in order to anchor the device to the ground and maintain the trap position as desired.

16. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kania 4,425,732.

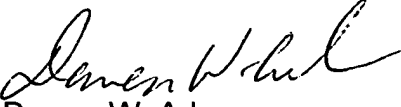
Kania does not disclose the opening in the plate being larger than the entry opening. It would have been an obvious matter of design choice to make the opening in the plate such that it is larger than the entry opening since applicant has not disclosed that by doing so is critical to the design or produces any unexpected results and it appears that the device of Kania would perform equally as well by doing so, and because by making the opening in the plate larger than the entry opening would allow the trigger plate to not be readily visible to the rodent and not present a possible obstacle through the housing to the second opening.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darren W. Ark whose telephone number is (703) 305-3733. The examiner can normally be reached on M-Th, 8:00am-6:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on (703) 308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Darren W. Ark
Primary Examiner
Art Unit 3643

DWA